

# COURTHOUSE NEWS

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A Summary of Topical Highlights from decisions of the  
U.S. District Court for the District of Oregon  
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## Civil Rights § 1983

Judge Haggerty granted summary judgment to defendants, holding that plaintiff had failed to present genuine issues of material fact that the City, its police officers, or the prosecuting attorney had maliciously prosecuted plaintiff, violated any of his due process rights, or had a custom, practice, or policy to deprive plaintiff of any constitutional rights. Plaintiff alleged that after an altercation he had with a patron at a Dairy Queen restaurant, he was subsequently arrested, charged with assault, and prosecuted with a judgment of acquittal. He asserted that the City's, the officers', and the prosecuting attorney's actions were without probable cause and done with malicious intent. In its opinion, the court noted that plaintiff had failed to adduce any evidence that the defendants acted without probable cause or with any other intent than to bring plaintiff to justice, and that the result of the criminal proceedings did not vitiate the lawfulness of their conduct.

Lemens v. City of Pendleton,  
CV 04-1702-HA  
(Opinion, May 2, 2005)  
Plaintiff's Counsel: Harold  
Shephard  
Defense Counsel: Gerald  
Warren

## Motion to Remand

Oregon resident James Franson brought a state court action for common law claims against an out-of-state corporation and at least one Oregon resident defendant, McCormick, arising from Franson's alleged wrongful discharge. McCormick obtained a state court order of dismissal with prejudice, and Franson filed an amended complaint. Less than 30 days after Franson filed his amended complaint and more than 30 days after the state court entered its dismissal order as to McCormick, the corporate defendant filed a notice of removal on the basis that McCormick had been "fraudulently joined" as a defendant in the first instance and his dismissal with prejudice permitted removal on the basis of diversity jurisdiction.

Franson filed a motion to remand contending the 30-day period to remove began to run no later than the date on which the state court entered its dismissal order.

Judge Brown granted Franson's motion to remand and ordered an award of reasonable attorneys' fees and costs to Franson.

Franson v. Crossroads  
Hospitality Co., CV 05-59-BR  
(Opinion, May 23, 2005)  
Plaintiff's Counsel: Kristine  
Lambert  
Defense Counsel: Amy  
Pedersen

## Title VII - Employment

Judge Stewart dismissed plaintiff's hostile work environment and retaliation claims under Title VII. One of plaintiff's two supervisors regularly viewed pornographic websites and webcams on his work computer. The other sent plaintiff three emails incorporating the phrase "I think I love you." In all other

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respects, all interactions with both supervisors were professional and unoffensive. The court found the allegations of supervisor's pornography viewing insufficient to support an HWE claim because the offending supervisor did not direct the images or webcam broadcasts at plaintiff, never asked her to view the images or webcam broadcasts, and tried to keep his pornography viewing secret from other employees, including plaintiff. The emails were also insufficient to support an HWE claim because, in context, no reasonable person could interpret them to be anything other than clumsy attempts to compliment the plaintiff on her job performance.

Judge Stewart also dismissed plaintiff's retaliation and wrongful discharge claims.

Fonseca v. Secor Int'l Inc.,  
CV 04-1117-ST  
(Opinion, May 5, 2005)  
Plaintiff's Counsel: Beth Ann  
Creighton  
Defense Counsel: Daniel  
Barnhart

## First Amendment

Plaintiffs Jews for Jesus and two of its individual members alleged that their First Amendment rights were violated by the Port's policy of requiring a permit before engaging in leafletting at Portland

International Airport. Judge Hubel first concluded that plaintiffs could not proceed on their "as-applied" free speech or freedom of religion claims because they never actually applied for a permit. Their failure to apply for a permit also resulted in the dismissal of their due process and equal protection claims. On their facial challenge to the policy, Judge Hubel concluded that as a nonpublic forum, the relevant question was whether the airport's restrictions were reasonable in light of the particular function served by the airport. In concluding that the airport's permit policy was reasonable and did not violate the First Amendment, Judge Hubel rejected plaintiffs' arguments that the policy was an unconstitutional prior restraint, that it unconstitutionally gave the airport unfettered discretion in issuing the permit initially and in revoking it, that it was unconstitutionally overbroad and vague, that it unconstitutionally lacked a judicial review provision, and that it unconstitutionally contained an identification requirement.

Jews for Jesus v. Port of  
Portland, CV 04-695-HU  
Plaintiffs' counsel: Herbert  
Grey  
Defendant's counsel: Karen

O'Kasey  
(Opinion, May 6, 2005)

## Personal Jurisdiction

Plaintiff filed an action for breach of contract for failure to fabricate machinery. Plaintiff and defendant are residents of different states. The contract indicated that defendant was to deliver the machinery to a third-party located in Oregon.

Judge Aiken, after undertaking an analysis of specific jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2), found no evidence that defendant either deliberately engaged in significant contracts in Oregon, or created continuing obligations between the defendant and the residents of Oregon. The court found that defendant's contacts with Oregon were "attenuated," failing to make even a prima facie showing that defendant had purposefully availed itself of the benefits and protections of the forum's law. The court dismissed this action based on lack of personal jurisdiction.

PSF Industries, Inc. v. Munroe,  
Inc., CV 05-6089-AA  
(Opinion, June 24, 2005)  
Plaintiff's Counsel: Guy Randles  
Defense Counsel: William  
Martin

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